

BakerHostetler

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Baker & Hostetler LLP

45 Rockefeller Plaza
New York, NY 10111

T 212.589.4200
F 212.589.4201
www.bakerlaw.com

Amanda L. Van Hoose Garofalo
direct dial: 212.589.4610
agarofalo@bakerlaw.com

September 29, 2020

VIA ECF

The Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

*Application granted.
Parties should provide a
status report by no later*

Re: *Himelda Mendez and On Behalf of All Other Persons Similarly
Situated v. Genesco Inc.*; Case No. 1:19-cv-11855

Dear Judge Koeltl:

*Thru 11/30/20. So ordered
in 6/16/20/USDC SDNY
9/30/20*

The Parties in the above referenced case respectfully request that the stay in this case be continued pending a decision by the United States Court of Appeals for the Second Circuit in a consolidated appeal of dismissals of nearly identical cases.

By way of background, Plaintiff filed her Complaint on December 27, 2019. (Doc. 1). On February 17, 2020, Defendant filed a motion for extension of time until February 28, 2020, to answer. (Doc. 6). The Court granted the motion on February 19, 2020. (Doc. 7). Defendant then filed a letter to the Court on February 21, 2020, outlining the basis for Defendant's proposed Motion to Dismiss. (Doc. 8). That same day, the Court scheduled a conference for April 9, 2020, at which time the Court would also discuss the proposed Motion to Dismiss. (Doc. 9). On February 25, 2020, Plaintiff filed his response to Defendant's letter regarding its proposed Motion to Dismiss. (Doc. 10). On February 26, 2020, the Court determined that a pre-motion conference was not necessary and issued a briefing schedule for the Motion to Dismiss. (Doc. 11). Then on March 23, 2020, Defendant filed a consent letter motion to stay all discovery and discovery deadlines and to adjourn the conference scheduled for April 9, 2020. (Doc. 12). The Court granted that motion on March 23, 2020. (Doc. 13). In accordance with the Court's briefing schedule, Defendant filed its Motion to Dismiss on March 27, 2020. (Docs. 15-16). Plaintiff subsequently filed an Amended Complaint on April 9, 2020. (Doc. 17). On April 13, 2020, Defendant filed a letter to the Court outlining the basis for Defendant's proposed Motion to Dismiss the Amended Complaint. (Doc. 18). On April 13, 2020, however, the Court issued an order staying this case until September 18, 2020, while the Court decides a similar motion in a similar case. (Doc. 19).

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As Your Honor likely knows, the United States District Court for the Southern District of New York has dismissed several nearly identical cases under Fed. R. Civ. P. 12(b)(1) and 12(b)(6)—the same grounds upon which Defendant has sought to file a motion to dismiss Plaintiff's Amended Complaint. *See, e.g., Dominguez v. Banana Republic, LLC*, No. 1:19-cv-10171-GHW (S.D.N.Y. Apr. 23, 2020); *Mendez v. Ann Taylor, Inc.*, No. 1:19-cv-10625-GHW (S.D.N.Y. Apr. 24, 2020); *Calcano v. Swarovski N. Am. Ltd.*, No. 1:19-cv-10536-GHW (S.D.N.Y. Apr. 24, 2020); *Calcano v. The Art of Shaving-FL, LLC*, No. 1:19-cv-10432-GHW (S.D.N.Y. Apr. 27, 2020); *Thorne v. Jersey Mike's Franchise Sys., Inc.*, No. 1:19-cv-09934-GHW (S.D.N.Y. May 13, 2020); *Murphy v. Kohl's Dep't Stores, Inc.*, No. 1:19-cv-09921-GHW (S.D.N.Y. May 13, 2020). The plaintiffs in those cases have appealed the dismissals and the appeals are presently pending in a fully-briefed consolidated appeal before the Second Circuit. *See, e.g., Calcano v. Swarovski N. Am. Ltd.*, No. 20-1552 (2d Cir. May 13, 2020). Various judges in the Southern District have therefore stayed similar cases pending the outcome of the consolidated appeal.

In light of the aforementioned fully-briefed consolidated appeal, the Parties respectfully request that the stay in this case be continued pending resolution of the consolidated appeal by the Second Circuit. A decision by the Second Circuit may be dispositive of this case and a stay would allow the Parties to avoid spending time and resources on a case that may, ultimately, be dismissed pursuant to a ruling by the Second Circuit.

The Parties thank the Court for its time and attention to this matter, and for its consideration of this request.

Respectfully Submitted,

Baker & Hostetler LLP

By: s/ Amanda Van Hoose Garofalo
Amanda Van Hoose Garofalo
Counsel for Defendant

The Marks Law Firm, P.C.

By: s/ Bradley G. Marks
Bradley G. Marks
Counsel for Plaintiff